

## Pension Benefit Guaranty Corporation

## § 4041.3

have not been satisfied and that the plan is an ongoing plan.

*Notice of plan benefits* means the notice to each participant and beneficiary required by § 4041.24.

*Participant* means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

*Plan benefits* means benefit liabilities determined as of the termination date (taking into account the rules in § 4041.8(a)).

*Proposed termination date* means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard or distress termination notice.

*Residual assets* means the plan assets remaining after all plan benefits and other liabilities (e.g., PBGC premiums) of the plan have been satisfied (taking into account the rules in § 4041.8(b)).

*Standard termination notice* means the notice filed with the PBGC pursuant to § 4041.25.

*State guaranty association* means an association of insurers created by a State, the District of Columbia, or the Commonwealth of Puerto Rico to pay benefits and to continue coverage, within statutory limits, under life and health insurance policies and annuity contracts when an insurer fails.

### § 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* In computing any period of time under this part, the day of the event from which the period begins is not counted. The last day of the period is counted. If the last day falls on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next regular business day. A proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

(b) *Filing with the PBGC.* Any document to be filed under this part must be filed with the PBGC in the manner described in the applicable forms and instructions package. The document is deemed filed on the date described in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section, as applicable, or such earlier date as is provided in the applicable forms and instructions package. For purposes of this paragraph (b), information received by the PBGC on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(1) *Filing by mail.* If the document is mailed with the United States Postal Service by first class mail postage prepaid to the PBGC, the document is filed on—

(i) The date of the legible United States Postal Service postmark;

(ii) If there is no legible United States Postal Service postmark, the date of the legible postmark made by a private postage meter, provided that the document is received by the PBGC not later than the date when a document sent by first class mail would ordinarily be received if it were postmarked at the same point of origin by the United States Postal Service on the last date prescribed for filing the document; or

(iii) In any other case, the date that the plan administrator can establish the document was deposited in the mail before the last collection of mail from the place of deposit.

(2) *Filing by commercial delivery service.* If the document is deposited with a commercial delivery service, the document is filed on the earlier of—

(i) The date that would be considered the postmark date under section 7502(f) of the Code; or

(ii) The date it is deposited for delivery with the commercial delivery service, provided it is received by the PBGC within two regular business days.

(3) *Electronic filings.* If the document is filed electronically, the document is filed on the date on which it is transmitted electronically to the PBGC, provided that, if there is reason to believe the document was not delivered, the plan administrator promptly refiles the document in accordance with the applicable forms and instructions package.

(4) *Other filings.* If a filing date is not established under paragraphs (b)(1) through (b)(3) of this section, the document is filed on the date on which it is received by the PBGC.

(c) *Issuance to other parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of §§ 4041.23(c) or 4041.24(f) is treated as an affected party.

(1) *Permissible methods of issuance.* The plan administrator must issue any notice to an affected party individually—

- (i) By hand delivery;
- (ii) By first-class mail or commercial delivery service to the affected party's last known address; or
- (iii) By electronic means reasonably calculated to ensure actual receipt by the affected party.

(2) *Date of issuance.* Any notice is deemed issued to an affected party on the date on which it is—

- (i) Handed to the affected party;
- (ii) Deposited in the mail;
- (iii) Deposited with a commercial delivery service; or
- (iv) Transmitted electronically to the affected party, provided that, if there is reason to believe the notice was not delivered, the plan administrator promptly reissues the notice in accordance with the applicable forms and instructions package.

(3) *Omission of affected parties.* The failure to issue any notice to an affected party (other than any employee organization) within the specified time period will not cause the notice to be untimely if—

- (i) *After-discovered affected parties.* The plan administrator could not rea-

sonably have been expected to know of the affected party, and issues the notice promptly after discovering the affected party;

(ii) *De minimis administrative errors.* The failure was due to administrative error involving only a *de minimis* percentage of affected parties, and the plan administrator issues the notice to each such affected party promptly after discovering the error; or

(iii) *Unlocated participants.* The plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly in the event the affected party is located.

(4) *Deceased participants.* In the case of a deceased participant, the plan administrator need not issue a notice to the participant's estate if the estate is not entitled to a distribution.

(5) *Form of notices to affected parties.* All notices to affected parties must be readable and written in a manner calculated to be understood by the average plan participant. The plan administrator may provide additional information with a notice only if the information is not misleading.

(6) *Foreign languages.* The plan administrator of a plan that (as of the proposed termination date) covers the numbers or percentages in § 2520.104b-10(e) of this title of participants literate only in the same non-English language must, for any notice to affected parties—

- (i) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or
- (ii) Provide the notice in that common non-English language to those affected parties literate only in that language.

#### § 4041.4 Disaster relief.

When the President of the United States declares that, under the Disaster Relief Act (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days any due date under this part.